



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Mohammed Donzo : ORDER
Tax Registry No. 948907 : OF
Detective Borough Manhattan South : DISMISSAL
-----X

Police Officer Mohammed Donzo, Tax Registry No. 948907, Shield No. 07534, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2016-15433, as set forth on form P.D. 468-121, dated May 25, 2016, and after a review of the entire record, has been found Guilty of all Specifications.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Mohammed Donzo from the Police Service of the City of New York.


JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: March 15, 2018



POLICE DEPARTMENT

March 1, 2018

-----X
In the Matter of Charges and Specifications :

- against - :

Police Officer Mohammed Donzo :

Tax Registry No. 948907 :

Detective Borough Manhattan South :
-----X

Case No.

2016-15433

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Rachel Grinspan, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Eric Sanders, Esq.
30 Wall Street, 8th Floor
New York, NY 10005

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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Website: <http://nyc.gov/nypd>

Charges and Specifications:

1. Said Police Officer Mohammed Donzo, on or about March 1, 2015, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer did wrongfully place or attempt to place a person known to the Department in fear of imminent physical injury by pointing a firearm at said person.
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONDUCT
2. Said Police Officer Mohammed Donzo, on or about March 1, 2015, while off-duty, improperly displayed his Departmental identification card to identify himself as a member of service.
P.G. 204-15 SHIELDS/ NAME PLATES/
IDENTIFICATION CARDS
3. Said Police Officer Mohammed Donzo, on or about March 1, 2015, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer unlawfully seized a civilian's property without permission or authority to do so.
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONDUCT
4. Said Police Officer Mohammed Donzo, on or about March 1, 2015, while off-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer abused his authority when he threatened to close down an auto body shop owned by a civilian known to this Department.
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONDUCT
5. Said Police Officer Mohammed Donzo, on or about March 10, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Police Officer made false and/or misleading statements during his Departmental interview.
P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
PROHIBITED CONDUCT

SUMMARY OF FINDINGS

The above-named member of the Department appeared before the Court on December 6, 7 and 19, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Martin Batalla Martinez, Riky Vidal, Sergeants Mary O'Donnell and Arnoldo Martinez, and Captain Robert Hachemeister as witnesses. Respondent

called Alhaji Donzo and Crystal Rivera as witnesses, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After reviewing the evidence presented at the hearing and assessing the credibility of the witnesses, the Court finds Respondent Guilty.

Facts

On March 1, 2015, **ALHAJI DONZO**, a livery cab driver and Respondent's brother, brought his cab to an auto body repair shop on Willets Point Boulevard, Queens (the area behind Citi Field) for repairs. Alhaji and **MARTIN BATALLA MARTINEZ**, the owner of the repair shop, agreed that Batalla would make repairs to Alhaji's vehicle while Alhaji waited nearby (Tr. 70, 118-19).

A verbal dispute later arose regarding the price of the work performed on Alhaji's car. At some point, Alhaji and Batalla agreed that Alhaji would drive to an ATM machine located at a nearby gas station, accompanied by someone from Batalla's shop (Tr. 74-75, 120-21).

Once they arrived at the gas station, Alhaji refused to pay any additional money for the repairs. Batalla was called from the gas station and was told that Alhaji was not willing to pay. He then left his body shop and went to the gas station where the argument continued. At some point, 911 was called. In anticipation of the arrival of the police, Batalla called his son, **RIKY VIDAL**, and asked him to come to the gas station in order to assist him with speaking to the police in English because Spanish is Batalla's preferred language (Tr. 74-75, 121-22).

According to Vidal, he arrived at the gas station at approximately 1930 hours. Approximately 15 minutes later, a black male arrived at the gas station driving a silver Toyota Solara registered to Respondent's then girlfriend, now wife, **CRYSTAL RIVERA**. The Department has asserted, and **RESPONDENT** has denied, that this male was Respondent. The events of the

subsequent dispute between Vidal, Batalla, Alhaji and the driver of the Toyota also are in dispute (Tr. 167-68, 198, 222).

At trial, Batalla testified that he and Alhaji had agreed that Batalla would replace the front end of Alhaji's car for \$400. Alhaji initially gave Batalla \$100 and then \$120 when the work was completed, indicating that he had no more money to pay the balance. Batalla suggested that Alhaji get more money from an ATM at a gas station located about three blocks away. Batalla sent someone from the shop to the gas station with Alhaji. Shortly thereafter, Batalla also went to the gas station because Alhaji had indicated that he was not going to pay anything else. When Batalla arrived at the gas station, Alhaji told him he was not happy with the work and in any event he did not have enough money in his account to withdraw the necessary funds (Tr. 120-21).

Batalla called his son, Riky Vidal, and asked him to come to the gas station to help him speak with Alhaji because Batalla did not speak much English. Vidal arrived, as did Respondent. When Respondent exited his car, Batalla was able to see his gun and shield on his waist. Respondent identified himself as a police officer and began talking to Vidal (Tr. 121-25, 157).

At some point, Batalla testified, Respondent withdrew his firearm from his waist as Vidal began filming him with a cell phone. Batalla testified that when he saw the gun, from a distance of about five feet away, he became nervous. Respondent walked toward Vidal holding the gun in his right hand and tried to stop him from filming. Batalla then pushed Respondent away from his son while saying "if you're going to kill my son, kill me first and nothing matters to me now" (Tr. 127, 154).

Riky Vidal testified that on March 1, 2015, he received a phone call late in the evening from Batalla, asking that he come to his auto repair shop to help with translating. When Vidal arrived at the gas station where the dispute was taking place, he parked his car behind what he

believed was the customer's car to prevent it from being able to leave before the situation was resolved (Tr. 165-66).

Vidal approached his father, who explained that Alhaji had said that he had been satisfied with the work done on his car, but needed to go to an ATM to withdraw the remainder of the money owed, thereby moving the dispute to the nearby gas station. Batalla told Vidal that shortly thereafter, Alhaji became agitated and aggressive and refused to pay (Tr. 166).

Vidal testified that Alhaji told him he was not satisfied with the repairs and "started just making up stories." Vidal suggested that Alhaji leave the car at the repair shop overnight and whatever needed to be fixed would be taken care of the next day. Alhaji refused (Tr. 166-67).

Alhaji began saying "let the cops come, let the cops come. My brother is coming, my brother is coming," and showed Vidal a PBA card. Vidal testified that 10 to 15 minutes later, Respondent arrived at the gas station driving a silver Toyota Solara. Respondent exited the car, "showed his shield and ID with a red background," lifted his jacket to expose a black firearm and said "I'm a police officer." Vidal was familiar with NYPD identification cards because he worked as a customer service agent at John F. Kennedy International Airport and had seen many law enforcement IDs, including NYPD ones. Respondent was standing about three feet away when he showed his Department ID. Vidal described Respondent as six feet tall, 30 to 35 years old, 175 to 180 pounds, and having a beard. Vidal described Alhaji as about six feet tall, slim build, no beard, and around 35 years old (Tr. 167, 169, 172, 182, 189-90, 199).

When Vidal began taking photos using his cell phone, Respondent, who "was already aggressive at the time . . . just reacted and attacked me" by lunging at Vidal while holding his firearm in his right hand and pointing it at Vidal. Vidal described the firearm as all black, looking like an "average handgun." Respondent pushed Vidal toward a gate with his left hand in an effort to grab Vidal's cell phone and said something along the lines of "you're going to have problems. I'm going to shoot you." In that moment, Batalla was able to intercede and put

himself in between Respondent and Vidal. According to Vidal, Respondent also told Batalla and Vidal that he was going to close down the repair shop. Respondent entered Vidal's vehicle, which had remained running, and moved it so that Alhaji's cab could leave the gas station (Tr. 171-73, 179, 194-97).

Around midnight, Vidal spoke with officers and was shown a photo array while seated in the back seat of the officers' vehicle. The responding officers made no comments to him as Vidal reviewed the photo array (Tr. 183-85).

A one-minute video taken by Vidal at some point during the dispute was entered into evidence as Department's Exhibit 3. At the beginning of the video, Alhaji can be heard saying, "Please, can you get the phone out of my face?" and gives Vidal the finger. Vidal replies by saying, "Nope, you want to leave without paying. Go, go." Alhaji then enters his black vehicle and begins backing out of the gas station (Tr. 174).

As Alhaji drives, Vidal follows the car while saying, "Got you on camera papa." He then turns the camera to the left, where four other men are standing, and begins asking for his car keys. One of the men, wearing a tan winter hat and black jacket says, "It's all good" and "Let's go!" Vidal again says, "Can I get my keys? Let me get my keys. I got you on camera. . . He's taking my keys and not giving them back, taking my keys without my permission." The individual wearing the tan hat then walks toward the silver Toyota Solara as Vidal says, "Smile," as he walks toward the man. The video ends shortly thereafter.

Department's Exhibit 4 is a still photograph Vidal took as Respondent was leaving the gas station in the Toyota. The photo was taken from behind, however, and the person's face is not visible (Tr. 172, 179).

Sometime around late March 1 or early March 2, 2015, **SERGEANT MARY O'DONNELL** of the Internal Affairs Bureau responded to the auto body shop to interview Vidal after a 911 caller alleged that an off-duty member of the service had "pulled his gun on someone." Vidal

told O'Donnell that earlier his father had called him and asked for help dealing with a situation at his father's place of business. Vidal indicated that someone at the scene of the incident stated that he was a police officer, displayed an identification card, and brandished a firearm. Vidal was shown a photo array and identified Respondent as the individual who had engaged in the alleged actions (Tr. 18, 20, 22, 26).

Sometime later in the day on March 2, 2015, **SERGEANT ARNOLDO MARTINEZ**, also of IAB, responded to the repair shop to assist with the translation of an interview of Batalla. Batalla was shown a photo array (Dept. Ex. 2) and identified Respondent as the man he had seen the night before. Batalla signed his name under Respondent's photo and wrote under the photo, in Spanish, "What happened he used his authority because he works with the city." When the investigators asked Batalla if he was sure about the identification of Respondent, Batalla said that he was positive. Batalla also told Martinez that in addition to displaying a firearm, Respondent had identified himself as a police officer "with auto crime" using an ID card with a red background (Tr. 44, 49, 54, 57-59).

At trial, Respondent categorically denied being present at the gas station and claimed that he was at home in [REDACTED], entertaining friends at the time of the incident. Instead, Respondent claimed that a friend of his, Person 1, went to the gas station to help Alhaji handle the situation (Tr. 214-15, 239).

Alhaji testified that he needed the repair shop to fix two things on his car: paint a portion of his car and repair the defroster. He testified that he was told he needed to pay half the agreed-upon price up front so the repair shop could purchase the necessary parts, with the other half to be paid upon completion of the work (Tr. 70-71).

According to Alhaji, once the body work was finished on the car, the repair shop told him that there would be an additional cost to repair the defroster, which was not what had been

agreed upon earlier. A verbal argument ensued and Alhaji was told that he could not take his car back unless he paid the additional repair costs (Tr. 72, 74).

Alhaji agreed to drive his car to a nearby gas station with two men from the repair shop under the guise of needing to withdraw cash from an ATM located there. According to Alhaji, because the repair shop was located in a relatively unpopulated and isolated area, he was nervous and wanted to go to the safety of a more public place where he could call 911 (Tr. 75).

Once at the gas station, Alhaji and the two men from the repair shop exited the car. Alhaji then locked the vehicle so that only he could re-enter it. Alhaji testified that he became nervous because he was outnumbered and called 911. The men began threatening to remove parts from Alhaji's car if he did not pay them (Tr. 74-75).

Alhaji testified that he called 911 "200 million times" but no officers responded to the scene. As a result, he called his brother, Respondent. Though Respondent did not answer Alhaji's phone calls initially, Alhaji was able to get in contact with Respondent by calling Rivera. At first, Respondent told Alhaji that he could not come to the scene to help because he could get in trouble. Respondent then told his brother to call a friend, Person 1, to help with the situation. Alhaji testified that Person 1 was his "best friend," yet claimed he did not know his last name. Thereafter, Person 1 arrived at the scene, the situation was "diffused," and Alhaji left the gas station (Tr. 76-77, 85).

According to Alhaji, though he spoke to Respondent on the phone, Respondent did not come to the scene of the argument. Rather, when Person 1 arrived, it was mistakenly assumed by Batalla and Vidal that he was Alhaji's brother because Alhaji had mentioned earlier that his brother was a police officer and was on the way (Tr. 95).

As Alhaji was leaving, a police officer called and asked if he still needed 911 assistance. Alhaji returned to the scene in order to make a police report of the incident. Alhaji spoke to a uniformed officer at the scene and informed them that his friend Person 1 also had been there.

earlier. Alhaji testified that no one displayed a NYPD ID or displayed a gun at any point (Tr. 78, 80, 95).

Rivera, Respondent's wife, testified that on the night of the incident, Respondent was with her at his home in [REDACTED] with some of his friends, including Person 1. Respondent's cell phone was ringing continuously, so Rivera checked who was calling. When she saw that it was Alhaji, she told Respondent and handed him the phone (Tr. 99).

Sometime thereafter, Person 1 left Respondent's house to meet Alhaji. Rivera gave the keys to her gray Toyota to Person 1 so that he could drive there. Respondent, Rivera asserted, did not leave the house at any time that evening. She did not see Respondent give either his Department ID or firearm to anyone that evening (Tr. 101, 104-05).

Analysis

Resolution of these charges rests on an assessment of witness credibility. In making such determinations, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of witness accounts both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and the degree to which the witness's account is logical and comports with common sense and general human experience. After carefully considering the evidence and witness testimony in this case, this tribunal finds that the preponderance of the credible evidence proved that Respondent was present at the scene of the incident and is guilty of the charged misconduct.

Specification Nos. 1, 2 & 4

Respondent is charged with wrongfully placing or attempting to place Vidal in fear of imminent physical injury by pointing a firearm at him, improperly displaying his Department identification card to identify himself as a member of the service, and abusing his authority by threatening to close down Batalla's auto body shop.

Because Respondent denies even being at the scene of the dispute, a credibility assessment must first be made regarding Respondent's whereabouts on March 2, 2015. The Court finds that Respondent did, in fact, travel to the gas station and engage in the aforementioned misconduct.

The tribunal found both Batalla and Vidal to be dispassionate witnesses whose testimony was sincere and without adulteration. There was no indicia of bias against police from either of them. In fact, Vidal testified to calling a police officer acquaintance to ask for advice on how to handle the situation (Tr. 169). Vidal's report of the incident to the police, and his identification of Respondent from a photo array hours after the incident, imbues his testimony with an additional indicium of reliability.

Furthermore, both Batalla and Vidal testified with a specificity that engendered credibility on their part. Vidal specifically testified about the ID card, which he was able to recognize as an NYPD ID due to its photograph of the officer in uniform in front of a red background. Vidal was familiar with such IDs from his job at JFK Airport checking in law-enforcement-member firearms for flights (Tr. 190).

On the other side, Respondent's interest in the outcome of this litigation cannot be understated. The serious charges he faces in this case are such that his continued employment with the Department is at jeopardy.

Particularly troubling were the contradictions between Respondent's trial testimony and the statements he provided during his official Department interview, a little over one year after the incident, on March 10, 2016. During his official interview, Respondent stated that he told Alhaji to call Person I for help with the situation because Person I lived in [REDACTED] and Respondent was not in [REDACTED] at the time. The problem is that Respondent testified at trial that Person I was at his home in [REDACTED] during the incident. When asked to explain the contradiction, Respondent testified at trial that he was notified to appear for his interview with

only one hour notice, so he "didn't remember the whole incident that day" and "gave the best answer that [he] could that day." Respondent also testified that he was able to recall the details of the incident after "go[ing] back and speak[ing] to people that were involved in the incident to retract [*sic*] my memory of what happened that day" (Tr. 224-26). Of course, Respondent already had over a year to recall the details by the time of the interview. The Court finds his explanation most unconvincing.

Another problematic contradiction is that Respondent stated in his official interview that he did not know why Rivera's vehicle would have been at the gas station. Respondent said at the time that "[e]veryone," including himself and family members and Person 1 had used her car sometimes (Tr. 228-29). Yet at trial, Respondent testified that he told Alhaji to call Person 1, and knew that Person 1 had left the house for the gas station (Tr. 211, 239). If so, Respondent should have had a very good idea of why Rivera's car might have been at the gas station.

Though Respondent was at home in [REDACTED], the disagreement between Donzo and Batalla was protracted, allowing Respondent enough time to travel from [REDACTED] to the Willets Point area of Queens. Respondent, in fact, claimed at trial that Person 1 made it from [REDACTED] to Willets Point, so obviously Respondent could have made it there in time too.

In claiming that Person 1 was the man who arrived in the Toyota Solara, Respondent, Alhaji, and Rivera are all also claiming that both Vidal and Batalla invented the allegations involving the firearm and ID card. To invent those allegations, however, the complainants would have to know that the person who came to Alhaji's aid was a police officer. Otherwise, they would not have been able to allege that the person had a firearm and an NYPD ID card, and that he threatened to shut the auto body shop down. Alhaji's claim that the complainants "assumed" Person 1 was his brother, whom Alhaji had mentioned was a police officer and was going to come and help with the money situation, is speculative.

Furthermore, Martinez, the IAB investigator, testified that Batalla told him Respondent identified himself as "somebody with auto crime." The use of such jargon is indicative of an individual familiar with police terminology, further making it incredible that Person 1, rather than Respondent, was at the scene (Tr. 75).

Unlike other witnesses at this trial, Alhaji was noticeably combative on the witness stand during cross examination. When initially posed with pointed, leading questions by the Advocate, Alhaji refused to answer, stating, "[S]he's got to phrase it right if she wants me to answer it." This led to a recess during which the Court strongly suggested Respondent's attorney speak to Alhaji. Alhaji's ready testimony on direct examination, coupled with immediately defensive behavior on cross, was indicative of falsehood (Tr. 81-83). Furthermore, Alhaji's testimony that Person 1 had been his best friend since childhood, but he did not know his last name, was so ridiculous as to be incredible (Tr. 75-76, 85-86).

Though Respondent argued that the photo arrays shown to both Vidal and Batalla were suggestive, he provided no evidence to support such a statement. Vidal and Batalla were shown the photo arrays separately by different investigators and both men identified Respondent. There was no evidence that Batalla selected another individual from a different array or initially failed to pick out Respondent (Tr. 133, 257-58).

Finally, while Respondent suggested that the complainants merely mistook Respondent for Person 1, the identification by both men of Respondent leaves little room for ambiguity. In any event, Person 1 (see Respt. Ex. A, facial photograph) does not resemble Respondent. And while the video and still photographic evidence from the gas station did not perfectly capture the person identified by the complainants, his face and build were consistent with Respondent's appearance, but his face was inconsistent with that of Person 1.

In sum, the Department proved by a preponderance of the evidence that Respondent wrongfully attempted to place Vidal in fear of imminent physical injury by pointing a firearm at

him, improperly displaying his Department ID card to identify himself as a member of the service, and abusing his authority by threatening to close down Batalla's auto body shop. He thus is found Guilty of Specification Nos. 1, 2 and 4.

Specification No. 3

Respondent is charged with unlawfully seizing Vidal's vehicle without permission or authority to do so. Respondent knew that there was a dispute between his brother and Batalla and Vidal concerning the amount owed. He decided to take matters into his own hands and move Vidal's car to get to Alhaji's. This was not defensible and the Court finds Respondent Guilty.

Specification No. 5

Respondent is charged with making false or misleading statements during his official Department interview. As Respondent has been found guilty of the above specified charges, his complete denial during the interview of any presence at the gas station (Tr. 213-15) constitutes the making of a false statement. As a result, Respondent is found Guilty of the fifth specification.

PENALTY RECOMMENDATION

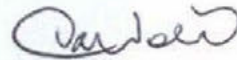
In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested termination as a penalty and the Court agrees. Respondent abused his authority as a member of the service to unfairly resolve a dispute. By all accounts the incident at issue in this case had not become violent until Respondent used his firearm and NYPD status to scare Vidal and Batalla into submission. Such behavior is indicative of an individual lacking the standards of judgment necessary to be a police officer. Further,

Respondent fabricated his testimony, giving a false account in which a family friend supposedly came to the gas station and interacted with the complainants.

The Court therefore recommends that Respondent be **DISMISSED** from employment with the Department. See Case Nos. 2015-13396 & 2016-15549 (July 13, 2017) (10-year officer with no prior disciplinary history terminated for, inter alia, pointing a handgun at an individual and stating, "I am gonna fucking kill you," engaging in a physical altercation and striking said individual in the face with a handgun, and being unfit due to alcohol consumption: on his way home from a night of drinking, officer pointed his firearm at another driver who had allegedly cut him off, threatened to kill him, and fled scene when other driver called 911).

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

MAR 15 2018

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MOHAMMED DONZO
TAX REGISTRY NO. 948907
DISCIPLINARY CASE NO. 2016-15433

Respondent was appointed to the Department on July 6, 2010. On his last three performance evaluations, Respondent twice received an overall rating of 4.5 "Extremely Competent/Highly Competent" and once received an overall rating of 3.5 "Highly Competent/Competent." He has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED]

Respondent was placed on Level 1 Disciplinary Monitoring on September 13, 2016, which remains ongoing.

Respondent has no prior formal disciplinary history since he was appointed as a police officer. On January 1, 2009, however, while a police cadet, Respondent was suspended after being arrested for assault following an off-duty incident. Respondent was restored to active duty status as a cadet on December 21, 2009.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials